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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

14 CR 652 (PGG)

5 EFRAIN LORA,

6 Defendant.

7 -----x

8 New York, N.Y.
9 December 18, 2019
10:19 a.m.

10 Before:

11 HON. PAUL G. GARDEPHE,

12 District Judge

13 APPEARANCES

14
15 GEOFFREY S. BERMAN,

16 United States Attorney for the
17 Southern District of New York

MAX NICHOLAS

17 Assistant United States Attorney

18 JEFFREY G. PITTELL

19 Attorney for Defendant

20
21 ALSO PRESENT:

22 STEVEN BERGER, NYPD Cold Case Squad

SPECIAL AGENT STEFANO BRACCINI

23 NATHAN RHODES, Spanish Interpreter

PABLO DONATTI, Spanish Interpreter

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(Case called)

THE DEPUTY CLERK: Is the government ready?

MR. NICHOLAS: Yes.

Good morning, your Honor. Max Nicholas, for the government. Seated to my right are Detective Steven Berger and Special Agent Stefano Braccini, both who worked on the investigation.

THE DEPUTY CLERK: Is the defendant ready?

MR. PITTELL: Yes, your Honor.

Jeffrey Pittell, appearing with Mr. Lora.

THE COURT: This matter is on my calendar for purposes of sentencing. In preparation for sentencing, I have read the revised presentence report, which is dated December 4th, 2019. I've read letters, dated December 13th and December 16th, 2019, from the government, and I've read a letter from the defendant, dated December 13th, and I've also read the exhibits attached to that letter.

Mr. Pittell, have you read the revised presentence report, its recommendation, and discussed it with Mr. Lora?

MR. PITTELL: Yes to all your questions.

THE COURT: And, Mr. Lora, has the presentence report been read to you in Spanish, and have you discussed it with Mr. Pittell?

THE INTERPRETER: "Yes." The defendant responded in English.

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1 THE COURT: The defense has objected to both factual
2 portions of the presentence report as well as the guidelines
3 calculations reflected in the presentence report. I'm going to
4 address those objections now. They're set forth in the defense
5 submission, which is Docket No. 204.

6 The background is that Mr. Lora was convicted at trial
7 of a (b)(1)(A) violation of 21, United States Code, Section
8 846, a narcotics conspiracy, which was Count Three of the
9 applicable indictment. He was also convicted of aiding and
10 abetting the discharge of a firearm in connection with that
11 drug conspiracy, a discharge that resulted in the death of
12 another person, in violation of 18, United States Code, Section
13 924(j). That was Count One.

14 And, finally, he was convicted of causing the
15 intentional killing of Andrew Balcarran B-a-l-c-a-r-r-a-n in
16 connection with a drug conspiracy, in violation of 21, United
17 States Code, Section 848(e)(1)(A). That was Count Two.

18 In an August 10, 2019 order, I vacated the jury's
19 finding -- findings as to drug quantity, finding that the
20 government had not proven (b)(1)(A) quantities beyond a
21 reasonable doubt.

22 As a result, I vacated the defendant's conviction on
23 Count Two because the government had not proven that the
24 underlying drug conspiracy involved (b)(1)(A) quantities of
25 drugs, which is a requirement for a Section 848(e) conviction.

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1 Mr. Lora's convictions were otherwise upheld, citing
2 Docket No. 190.

3 On September 3rd, 2019, Mr. Lora moved for leave to
4 file a motion for a judgment of acquittal on Count One, the
5 Section 924(j) count, arguing that the evidence was
6 insufficient to sustain his conviction on that count. I denied
7 that motion in a November 4, 2019 order, Docket No. 196.

8 I reviewed the evidence offered at trial in some
9 detail in the August 10, 2019, and November 4, 2019 orders, and
10 I will only summarize the proof here as I go through the
11 defendant's objections.

12 As an initial matter, Mr. Lora, again, argues that the
13 evidence was insufficient to support his conviction on Section
14 924(j) count, which charges him with aiding and abetting the
15 discharge of a firearm in connection with the drug-trafficking
16 conspiracy charged in the indictment, and thereby causing the
17 death of another person.

18 The evidence at trial showed that the victim of the
19 shooting was a competing drug dealer named Andrew Balcarran and
20 that Balcarran had been murdered because Lora wanted to take
21 over his drug spot. I summarize that proof in my November 4th
22 order as follows, and I quote:

23 "The evidence at trial showed that Lora controlled a
24 drug-trafficking spot at 169th Street and Franklin Avenue in
25 the Bronx. Lora supplied the cocaine and crack cocaine sold by

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1 his codefendants at that location." Citing the trial
2 transcript at 44-45, 107, 109-110, 127-132, 177-180, 190, 218
3 to 23, and 245.

4 "The evidence further demonstrated that Andrew
5 Balcarran, the victim of the charged shooting, was a competing
6 drug dealer who operated on 170th Street and that Balcarran was
7 murdered because Lora and codefendant wanted to take over
8 Balcarran's 170th Street drug selling location." (Id. at page
9 263.

10 "One of the shooters testified that Lora was involved
11 in and present during the lead-up to the shooting, id. at
12 203-263, and that Lora reported Balcarran's location to the
13 shooters immediately before Balcarran was shot to death. (Id.
14 at pages 255 to 56.

15 "Given this evidence and drawing all permissible
16 inferences in favor of the government, as this Court must, see
17 United States v. Taylor, 816 F.3d 12 at 22 (2d Cir. 2016), a
18 rational trier of fact, id., could have found that Lora caused
19 Balcarran's death by aiding and abetting the discharge of a
20 firearm in furtherance of the charged narcotics conspiracy, in
21 violation of 18, United States Code, Section 924(j)." Citing
22 Docket No. 196 at page 4.

23 "The proof of the murder conspiracy is also set forth
24 in my August 10, 2019 order." Citing Docket No. 190, pages
25 3-5.

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1 Lora's renewed insufficiency argument is overruled
2 based on the evidence discussed in those two orders.

3 Mr. Lora also objected to paragraph 15 in the
4 presentence report, which states that Lora supplied cocaine to
5 members of his crew, including Luis Lopez and Luis Trujillo.
6 The evidence at trial showed that Lora controlled a
7 drug-trafficking spot, as I said, located at 169th Street and
8 Franklin Avenue. There was also evidence that it was he who
9 supplied the cocaine and crack cocaine sold by his codefendants
10 at that location.

11 Lora's crew of drug sellers included himself, Oscar
12 Palmer, also known as Tito, Luis Lopez, Luis Trujillo, and many
13 others. Several witnesses testified at trial that they had
14 bought cocaine directly from Lora. This proof is discussed in
15 detail in my August 10, 2019 order, Docket No. 190, at pages 5
16 through 8.

17 The objection to paragraph 15 is overruled.

18 Lora also objects to paragraph 17 of the presentence
19 report, which states that Lora directed Trujillo and Lopez to
20 murder Balcarran. As I have discussed, a reasonable jury could
21 have found that Lora ordered his underlings to murder
22 Balcarran. Lora headed a drug crew that was selling drugs at
23 169th Street and Franklin Avenue, and Balcarran had a competing
24 drug operation a block away.

25 There was evidence that Balcarran had threatened

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1 Lora's chief lieutenant, Oscar Palmer, also known as Tito, and
2 was trying to extort him. Citing trial transcript at 126-27,
3 page 203, pages 250 to 54, pages 262 to 63, 278, 288 and 289 to
4 90.

5 On the day of the murder, Lora was in a car following
6 coconspirators who were in another car as they obtained the
7 guns that were used to kill Balcarran, and it was Lora who
8 informed the shooters where Balcarran was standing immediately
9 before the murder. The shooters then drove to that site and
10 killed Balcarran on the side of the street.

11 There was also evidence that one of the conspirators,
12 Luis Lopez, told one of the shooters that Balcarran was killed,
13 so that Lora and his chief lieutenant, Tito, could take over
14 the drug-selling spot. Citing the August 10, 2019 order,
15 Docket No. 190, at pages 5-8.

16 The objection to paragraph 17 is overruled.

17 Lora also objects to paragraph 19 of the presentence
18 report, which states that Lora was in a car following the
19 shooter's car on the day of the murder, and that Lora circled
20 the block looking for Balcarran. As I said, there was evidence
21 at trial that Lora was seated inside a vehicle that was
22 following the shooter's car. Citing the trial transcript at
23 page 251. Lora broke off at some point, and it is a fair
24 inference that he broke off to look for Balcarran because he
25 called the shooters from the car he was in to report where

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1 Balcarran was standing. Id. at page 255. The shooters then
2 drove to that location, called Balcarran over to the car, and
3 shot him to death.

4 The objection is overruled.

5 Lora also objects to paragraph 20 of the presentence
6 report, which states that Lora drove around the block to make
7 sure that Balcarran was actually dead after the shooting. I
8 didn't see anything in the trial transcript in which a witness
9 testified that Lora drove to the block after the murder.
10 Accordingly, I will disregard that portion of paragraph 20.

11 Lora also objects to paragraph 22 of the presentence
12 report, which states that he wanted to take control over
13 Balcarran's drug spot, and that after Balcarran's death, Lora
14 did, in fact, gain control over that drug spot and maintained
15 control over it for years.

16 As I said, there was evidence at trial that one of the
17 coconspirators told one of the shooters that Balcarran had been
18 killed because Lora and Tito "wanted to take [Balcarran's
19 drug-selling] spot on 170th," citing the trial transcript at
20 263.

21 Moreover, there was evidence that except for a
22 six-month period following Balcarran's murder, Lora
23 continuously sold drugs on a daily basis from the 2002 murder
24 through 2015 in the vicinity of 169th Street and Franklin
25 Avenue. It is a fair inference that the murder of Balcarran

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1 allowed Lora to maintain his drug-selling operation for many
2 years in that neighborhood, the same neighborhood he had
3 previously shared with Balcarran. Id. at pages 130 to 32, 134,
4 177 to 79, 180 to 81.

5 Accordingly, the objection is overruled.

6 Lora also objects to paragraph 23, which states that
7 he was the leader of a drug distribution business in the Bronx
8 in the vicinity of Franklin Avenue. That is exactly what the
9 evidence showed. To the extent that Lora objects to that
10 sentence in paragraph 23, the objection is overruled.

11 Paragraph 23 also states that Lora is responsible for
12 the distribution of 15 kilograms of cocaine and more than
13 700 grams of crack cocaine, but notes that the Court vacated
14 the jury's finding as to drug quantity. Having vacated the
15 jury's findings as to drug quantity, obviously, I will
16 disregard the reference to 15 kilograms of cocaine and
17 700 grams of crack cocaine in that paragraph.

18 Before I turn to the guidelines calculations, let me
19 ask you, Mr. Pittell, if you have any other objections to the
20 factual portions of the presentence report?

21 MR. PITTELL: No. You've covered them all. Thank
22 you.

23 THE COURT: Does the government have any objection to
24 the factual portions of the presentence report before I turn to
25 the guidelines calculation?

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1 MR. NICHOLAS: No, your Honor.

2 THE COURT: With the exception of the matters that I
3 have said I will disregard, I adopt the findings of fact set
4 forth in the presentence report.

5 Mr. Lora also objects to certain sentencing guidelines
6 calculations. I will address those objections now.

7 Lora objects to paragraph 31, which applies Section
8 2A1.1 of the sentencing guidelines to calculate the base
9 offense level for his 924(j) conviction.

10 Section 2A1.1 is the guidelines provision for first
11 degree murder. As I stated, the evidence was sufficient to
12 demonstrate that Lora aided and abetted the premeditated murder
13 of Balcarran. Accordingly, that objection is overruled.

14 Lora also appears to object to paragraph 37. Citing
15 the defendant's brief, Docket No. 204, pages 15-16. The brief
16 is somewhat garbled at this point, and there appear to be typos
17 with respect to the guidelines references, but the argument
18 appears to be that to apply Section 2A1.1 to both Counts One
19 and Three is impermissible double-counting.

20 I reject that argument. The guidelines for a Section
21 924(j) conviction as well as a conviction under 21, U.S.C.,
22 Section 846 clearly both call for application of Section 2A1.1,
23 where a premeditated murder is part of the underlying drug
24 conspiracy.

25 Accordingly, the objection is overruled.

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1 Lora also objects to paragraph 40 of the presentence
2 report, which imposes a four-level role in the offense
3 enhancement because Lora was an organizer or a leader of a drug
4 conspiracy that involved five or more people or was otherwise
5 extensive. As I have said, Mr. Lora was the leader of a drug
6 crew that distributed drugs in the vicinity of 169th Street and
7 Franklin Avenue for 15 years or more. His crew consisted of
8 himself, Oscar Palmer, also known as Tito, Luis Lopez, Luis
9 Trujillo, and others, including individuals that a witness
10 referred to at trial as Pedro, Joel, and Jimmy. Citing trial
11 transcript at 134; also, the August 10, 2019 order, Docket
12 No. 190, pages 5-8.

13 Accordingly, the four-level enhancement applies, and
14 the objection is overruled.

15 I will say that the role in the offense enhancement is
16 irrelevant here and has no impact on Lora's guidelines range
17 because the top level in the guidelines is level 43, and Lora
18 is at level 43 before the role in the offense enhancement is
19 applied.

20 Lora objects to paragraphs 86 and 87 of the
21 presentence report because they state that the applicable
22 statutory maximum term of imprisonment for the narcotics
23 conspiracy count is 30 years. The objection is overruled. The
24 maximum is 30 years here because the government filed a prior
25 felony information. Citing Docket No. 76.

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1 In such circumstances, the statutory maximum for a
2 violation of 21, United States Code, Section 841(b)(1)(C) is 30
3 years' imprisonment.

4 Lora objects to paragraphs 48 through 55 of the
5 presentence report because they impose criminal history points
6 for Lora's eight prior drug-trafficking convictions. Lora
7 contends that these convictions are relevant conduct. Citing
8 the defense brief, Docket No. 204, at page 17. The government
9 agrees. Citing Docket No. 206. Accordingly, I will not impose
10 criminal history points for Mr. Lora's prior drug convictions,
11 and, contrary to the presentence report, he will not be
12 sentenced as a career offender.

13 Mr. Lora objects to paragraph 57, which imposes two
14 criminal history points because he was on probation at the time
15 of the instant offense. Lora says he disputes that he was on
16 probation at the relevant time, but he doesn't explain why. I
17 conclude that Lora has two criminal history points because he
18 was on probation at the time he committed the instant offense.

19 I will note that this issue is likewise irrelevant.
20 Because of level 43, the guidelines recommend life imprisonment
21 regardless of criminal history score.

22 Finally, Mr. Lora objects to paragraph 86 of the
23 presentence report, which states that a mandatory consecutive
24 minimum term of imprisonment of ten years applies to Count One,
25 the 924(j) charge. The Second Circuit has held that Section

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1 924(c) of Title 18 is incorporated into Section 924(j),
2 including the mandatory minimum sentences. Citing United
3 States v. Barrett, 937 F.3d 126, 129, n.2, (2d Cir. 2019).

4 However, the government concedes that here the jury
5 was not asked on the jury form to make a specific finding that
6 a firearm was discharged, and that, accordingly, a five-year
7 minimum mandatory sentence rather than the ten-year minimum
8 mandatory sentence applies.

9 I conclude that under Barrett, a five-year minimum
10 mandatory sentence applies to Count One.

11 Having addressed the defendant's objections to the
12 presentence report's guidelines calculations, I will now set
13 forth my findings. Although I'm not required to impose
14 sentence in accordance with the sentencing guidelines, I am
15 required to consider what the applicable guidelines recommend.

16 Mr. Lora was found guilty at trial of aiding and
17 abetting the use of a firearm in connection with a narcotics
18 conspiracy charged in Count Three, causing the discharge of a
19 firearm, which caused the death of Andrew Balcarran. He was
20 also convicted of conspiracy to distribute, or possess with
21 intent to distribute, cocaine and cocaine base.

22 Pursuant to the grouping rules, Counts One and Three
23 are grouped together because Count One represents conduct that
24 would be an adjustment to the guideline applicable to the drug
25 distribution conspiracy charged in Count Three.

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1 As I've indicated, the guideline for this group is
2 Section 2A1.1, which applies to Count One and is applicable to
3 Count Three by cross-reference.

4 The base offense level for Counts One and Three is 43.
5 As I've said, because Mr. Lora was an organizer or a leader of
6 the drug conspiracy, and the conspiracy involved five or more
7 people or was otherwise extensive, a four-level enhancement is
8 appropriate. That leads to an adjusted offense level of 47.
9 However, the guidelines top out at 43. Accordingly, Mr. Lora's
10 total offense level is 43.

11 As to criminal history, I conclude that Mr. Lora has
12 two criminal history points because he committed the drug
13 conspiracy offense while on probation. He, thus, falls within
14 Criminal History Category II. Offense level 43, at Criminal
15 History Category II, results in a guidelines range of life
16 imprisonment.

17 Count One also carries a mandatory minimum consecutive
18 sentence of five years' imprisonment, and, as I've said, the
19 statutory maximum term of imprisonment on Count Three is 30
20 years.

21 Accordingly, the applicable guidelines range is 30
22 years' imprisonment on Count Three, to be followed by a
23 mandatory consecutive term of five years up to life
24 imprisonment on Count One.

25 Mr. Pittell, do you have any other objections to the

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1 guidelines calculations as I reported them?

2 MR. PITTELL: No. You've covered them as well. Thank
3 you.

4 THE COURT: Does the government have any objections to
5 the guidelines calculations as I reported them?

6 MR. NICHOLAS: No, your Honor.

7 THE COURT: Based on my independent evaluation of the
8 sentencing guidelines, I find that the offense level is 43, the
9 criminal history category is II, and the applicable guidelines
10 range is 30 years' imprisonment on Count Three, plus a
11 mandatory consecutive sentencing of five years' imprisonment up
12 to life imprisonment, on Count One.

13 I'll hear from you, Mr. Pittell, as to an appropriate
14 sentence.

15 MR. PITTELL: Judge, I tried to cover Mr. Lora's
16 personal background in my sentencing submission. One thing
17 that I didn't mention that I would like to, actually, discuss
18 is that I urge you to consider the need for an unwarranted
19 disparity in this case. Even though I'm objecting, I
20 acknowledge that your findings are a life sentence pursuant to
21 the guidelines. Although I don't request a specific sentence
22 in my submission, I'm obviously requesting something less than
23 life.

24 I ask you to at least consider the sentences of
25 Trujillo, which was only five years, the sentence of Lopez,

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1 which was only ten years, and although Caban has not yet been
2 sentenced, given that he cooperated and testified at trial, I
3 can anticipate that he will get a significant sentencing
4 consideration.

5 While Mr. Lora, even though I objected and your Honor
6 has found that he was a leader, when you look at the other
7 sentences and the involvement, Trujillo was the one who
8 actually provided the guns, and he got five years. He is the
9 one who instructed Caban how to shoot the guns, and only got
10 five years. Lopez was the one who recruited Caban, he got ten
11 years. And Caban was the one who actually was basically the
12 hired killer who had no personal motive -- not that that's
13 justification for killing somebody -- and he's the one who got
14 the -- will receive the benefit of cooperating.

15 So I ask you at least to take that into consideration,
16 as well as the personal information, especially the letters
17 that I've attached to the sentencing memorandum, when you
18 determine an appropriate sentence in this case.

19 Thank you.

20 THE COURT: All right. I'll hear from the government.

21 MR. NICHOLAS: Thank you, your Honor.

22 I just want to make a couple of points that -- I'll
23 try not to repeat my submission.

24 I wanted to address what Mr. Pittell said, but I want
25 to say first that Mr. Balcarran's family and friends are not

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1 here today, but as the Court knows personally, they've been
2 here for one, and I think both, of the other sentencings in
3 this case. They were here, and I think they addressed the
4 Court at the sentencing of Mr. Lopez. They were -- some of
5 them were here for the sentencing of Mr. Trujillo, and many of
6 them were here throughout the whole trial. I want to let the
7 Court know, to the extent that it informs the Court's view in
8 any way of the -- I think the best kind of box for it within
9 3553(a) would be promotion of respect for the law and
10 seriousness of the offense. The need for those things is
11 obviously plain here, but I want to impress upon the Court that
12 not that I've been here for a million years, but I have not had
13 another case as a prosecutor where the family and friends of a
14 victim in a murder case or any other kind of case, where the
15 family and friends of a victim have been as involved as they
16 have been in this case in terms of attention to what's going
17 on, emotional reaction to -- the emotional reaction during the
18 trial, their emotional state -- as the Court will remember, the
19 jury was out for a day and a half or so -- their emotional
20 state during that time, their desperate need for some measure
21 of closure in this part of their life.

22 And I think it was a humbling experience for me to
23 interact with them over and over. It personally pressed on me
24 the kind of the hole that's been put in their life through the
25 death of Andrew Balcarran. Their lives have been forever

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1 changed. I know they have said this directly to the Court, I
2 know they spoke at Luis Lopez's sentencing, but I thought it
3 was important to raise anyway.

4 THE COURT: I will comment -- obviously, I presided
5 over the trial, and one of the things that struck me, and I
6 guess I should say for the record, that the murder that brings
7 us here today happened in 2002, the trial was in 2016, and I
8 believe Mr. Balcarran's daughter testified at the trial.

9 MR. NICHOLAS: Your Honor, I don't think that his
10 daughter testified at the trial. At the sentencing, your
11 Honor.

12 THE COURT: Okay. But my reaction to the daughter's
13 statements, as she spoke about the murder and the effect it had
14 on her life, and she was giving these statements many, many,
15 many years after the incident, certainly more than 14 years
16 after the incident, my reaction was that it was like the murder
17 had happened yesterday. That was my reaction. So I was also
18 quite struck by the continuing effect of the murder, how
19 immediate it was to her, even though so many years had passed.
20 So I do remember that quite clearly.

21 Go ahead, Mr. Nicholas.

22 MR. NICHOLAS: Thank you, your Honor.

23 So I'll move on, your Honor. I did want to address
24 the disparity argument that Mr. Pittell made. It's something
25 that I raised in the government's sentencing submission, so I

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1 won't repeat what's in the submission. Just with respect to
2 what Mr. Pittell said, in imposing sentence on Mr. Lopez and
3 Mr. Trujillo, the Court explicated in some detail the very
4 specific reasons for those particular sentences. Included
5 among those -- I think Mr. Trujillo had two relatively
6 extraordinary circumstances. One was that, if I'm recalling
7 correctly, the Court found that he had cooperated in good-faith
8 with the Bronx District Attorney's Office for a number of
9 years, and --

10 THE COURT: Ten years comes to mind.

11 MR. NICHOLAS: -- and I think that he had volunteered
12 his role to them. And I think he had -- I reviewed this in
13 preparing my submission, and I should remember the details
14 better, but I think he had been arrested on a much, much lesser
15 charge in the Bronx and had -- from the inferences that the
16 Court was able to draw from what had happened, appears to have
17 volunteered that he had played some role -- though I think he
18 minimized the nature of the role, he, somewhat astonishingly,
19 volunteered that he played a role in the murder to the Bronx
20 district attorney.

21 The other thing with Mr. Trujillo was that he had had
22 some involvement in the church for quite a while, and I think a
23 minister, or priest, or someone of that nature may have
24 testified at his sentencing. He also had no criminal history.
25 And his role in the murder was not too directed.

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1 With respect to Mr. Lopez, he had -- if I'm
2 remembering correctly from my review of the sentencing
3 transcript, he had no criminal history, he had a much -- and
4 the Court noted the way he had spent -- not only that he had no
5 prior criminal history before the murder, but that he had none
6 after, that he had spent the intervening years building a
7 family life. And the Court was, I think, wary of -- or I guess
8 perhaps a better way to put it is the Court was sensitive to
9 the disruptive effect that a very long sentence was going to
10 have on what Mr. Lopez had built -- had attempted to build in
11 the intervening years, and the Court was also sensitive to, and
12 noted, that Mr. Lopez was basically put in a position where
13 he -- by Mr. Lora and Mr. Palmer, Tito, where he felt like he
14 had to get this murder done, didn't want to do it himself. He
15 did recruit Caban, and he bears a big part of the blame for
16 what happened to Mr. Balcarran because he did that, but I think
17 there were -- in thinking about avoiding an unwarranted
18 sentencing disparity, there were very specific -- the attention
19 to the detail is what was the basis, I think, for those
20 sentences, and that same attention to the detail of the way
21 this murder went down militates in favor of a substantially
22 larger sentence here.

23 There's an argument to some extent in the sentencing
24 papers that, well, Mr. Lora was not the shooter, you know,
25 Caban was the actually shooter, and Trujillo is the one who

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1 taught him how to shoot, and Lopez is the one who recruited
2 Caban. I think those facts cut both ways. I think all of
3 those individuals bear tremendous blame for what happened, of
4 course -- that goes without saying -- but I think a person
5 should not be able to leverage or to use as a shield the fact
6 that they operated from a safe distance, the fact that they had
7 enough status -- because of the role in the drug-dealing side
8 of things, that because that status conferred on them an
9 ability not to have to be the one to fire a gun, to be the
10 person who makes the call instead of sticking their hand out
11 the window and doing the unbelievably bloody act, the fact that
12 instead of being Caban, he oversees the operation and recruits
13 a person like Caban to carry this out, that is not mitigating.
14 It's the opposite.

15 So I think the fact that his status in the
16 drug-trafficking side of things conferred on him the ability to
17 operate from a distance, and then to try to -- and then to
18 preserve some level of deniability and to -- the case is much
19 harder to make -- the case against Lora is a triable case, it
20 went to trial. That's not necessarily the case with the way
21 that other people were involved, and it's not a coincidence
22 that Lora had a triable case. It's because of the status that
23 Lora had with the drug-trafficking side conferred on him the
24 ability to play a certain role in the murder, a higher role and
25 a less gory role, and that is not mitigating. It's the

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1 opposite of mitigating.

2 Those are the points I wanted to make, Judge. I know
3 that the Court has an unusual amount of familiarity with this
4 case, having presided over the trial and having presided over
5 now three sentencings. So unless the Court has questions, I'll
6 rest.

7 THE COURT: Mr. Lora, is there anything you wish to
8 say before the Court imposes sentence?

9 THE DEFENDANT: No.

10 THE COURT: In deciding upon an appropriate sentence,
11 I have considered all the factors listed in Title 18, United
12 States Code, Section 3553(a), including the nature and
13 circumstances of the offenses, Mr. Lora's personal history and
14 characteristics, the need for the sentence imposed to reflect
15 the seriousness of the offenses, the need to promote respect
16 for the law, to provide just punishment, and to afford adequate
17 deterrence.

18 Beginning with the nature and circumstances of
19 Mr. Lora's offenses: I've already discussed the facts of the
20 case in some detail. As I've said, Mr. Lora sold cocaine and
21 crack cocaine for more than 15 years in the vicinity of 169th
22 Street and Franklin Avenue in the Bronx.

23 His drug business led him into conflict with a
24 competing drug dealer, Andrew Balcarran. Mr. Balcarran
25 threatened and tried to extort Mr. Lora's chief lieutenant,

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1 Oscar Palmer, who went by the name Tito. It is a fair
2 inference that Mr. Lora had decided that Balcarran would have
3 to be killed and that he directed his subordinates, including
4 Luis Lopez and Luis Trujillo, to take care of the problem. One
5 of Mr. Lora's workers, Luis Lopez, approached his cousin, Dery
6 Caban, who had recently got out of prison, and asked him to
7 commit the murder of Balcarran. Caban agreed to do so because
8 of the close relationship he had with Lopez.

9 A reasonable jury could have found that Mr. Lora
10 supervised the preparation from a distance. But he was there
11 when the weapons were obtained from Trujillo's home, and a
12 reasonable jury could have found that he searched the
13 neighborhood to find Balcarran on the day of the murder. And
14 when he located Balcarran, who was standing in front of his
15 home, Lora called his subordinates, who were in a second car
16 with the guns, to report Balcarran's location. The shooters
17 then drove to Balcarran's location, and two of Lora's
18 coconspirators shot Balcarran to death in cold blood on the
19 sidewalk in front of his home, with his family inside.

20 After a brief interlude, Mr. Lora picked up his
21 drug-dealing at the 169th and Franklin Avenue location and
22 continued to deal drugs there over the next 13 years.

23 As to Mr. Lora's personal history and characteristics:
24 He was born in Santo Domingo in the Dominican Republic. He's
25 currently 49 years old. His father was physically abusive, but

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1 he had a close relationship with his mother. His parents
2 separated when he was young. Lora and his many siblings were
3 raised in poor socioeconomic conditions, but he was provided
4 with the basic necessities.

5 Mr. Lora was never married, but has three daughters
6 from prior relationships.

7 He lived in the Dominican Republic until 1986. In
8 that year, he came to the United States, settling eventually in
9 the Bronx. He is a permanent resident, but currently is under
10 removal proceedings.

11 As to education: Mr. Lora dropped out of high school.

12 As to employment: He claims that he was employed at
13 various delis and bodegas in Manhattan and the Bronx. However,
14 there is no confirmation of that, nor have any details been
15 provided as to that employment.

16 There's no significant history of substance abuse.

17 As to medical condition, Mr. Lora suffers from
18 diabetes and high blood pressure.

19 As to criminal record: Mr. Lora has eight prior
20 convictions, all of which are drug-related. They span the
21 years between 1991 and 2009. Given this conviction history, as
22 well as the evidence at trial, it is a fair inference that Lora
23 has supported himself through drug-trafficking for most of the
24 many years he's been in this country.

25 To summarize, the guidelines recommend 30 years'

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1 imprisonment on Count Three, to be followed by a mandatory
2 consecutive term of five years up to life imprisonment on Count
3 One. The probation department has recommended a sentence of 30
4 years on Count Three, to be followed by a consecutive sentence
5 of life imprisonment.

6 The government has asked me to sentence Mr. Lora to
7 life imprisonment.

8 The defense seeks a, quote, fair and just sentence,
9 closed quote.

10 With all this in mind, I'll now describe the sentence
11 I intend to impose, and then I'll ask the parties if there's
12 anything further they wish to say.

13 Let me start with the issue of disparity. I have
14 previously sentenced two of the codefendants, Luis Trujillo and
15 Luis Lopez. The circumstances of both were unusual. This was
16 a cold case. The murder was unsolved for more than ten years.
17 And so it presented the unusual circumstance of an opportunity
18 to observe what the participants in the crime did with their
19 lives during the period between 2002 and their eventual arrest
20 many, many years later, 14 years later. That information was
21 actually quite extraordinary.

22 First, with respect to Mr. Trujillo, who certainly
23 played a significant role in the murder conspiracy, it was his
24 home that the guns were stored in, and he did obtain the guns,
25 and he showed Caban how to use the weapon that Caban used. So

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1 he certainly was intimately involved in the murder conspiracy.
2 But Mr. Trujillo, as Mr. Nicholas outlined, entered into a
3 ten-year cooperative relationship with the Bronx DA's office,
4 which was interested in prosecuting the case. It signed up
5 Mr. Trujillo as a cooperator. And during that more than
6 ten-year period, Mr. Trujillo appeared in court over, and over,
7 and over again, as the case was adjourned, because the shooters
8 couldn't be found.

9 And during that 14-year period between the murder in
10 2002 and his arrest in 2016, Mr. Trujillo had completely turned
11 his life around. Trujillo was steadily employed during that
12 entire period. I made a finding at the time of Trujillo's
13 sentencing that he had lived a, quote, "law-abiding,
14 productive, useful life for the past 14 or so years."

15 So, acknowledging the significant role that Trujillo
16 had played in the murder, but also acknowledging the
17 subordinate role he had played, and taking into account what he
18 had done with his life in that 14-year period, I sentenced him
19 to five years.

20 And then with respect to Mr. Luis Lopez, who, as
21 Mr. Nicholas said, approached his cousin about committing the
22 murder, I made similar findings about what Mr. Lopez had done
23 with his life over the past 14 years. And as with
24 Mr. Trujillo, he turned his life around after the murder. He
25 committed no criminal acts, or at least he had no criminal

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1 record from that point onwards, and I took those facts into
2 consideration, as well as his subordinate role, in imposing the
3 ten-year sentence that I issued with respect to him.

4 The record here is much, much different. Mr. Lora has
5 spent most of his adult life committing crimes, drug crimes.
6 He consistently sold drugs in his neighborhood over a period of
7 more than 15 years. There's no evidence that he's done
8 anything productive with his life since the murder in 2002.
9 He's been arrested over and over again and convicted of
10 drug-trafficking crimes. It was his drug business that came
11 into conflict with Balcarran's drug business, and as I found, a
12 rational jury could have concluded that he ordered Balcarran's
13 murder.

14 Given these circumstances, I find that Mr. Lora is the
15 most culpable figure because he ordered the murder, and he was
16 the prime beneficiary of the murder. He continued the drug
17 business that he had been engaged in for many years. He
18 continued that business for the next 13 years, from 2002 to
19 2015.

20 So I find that giving Mr. Lora a significantly greater
21 sentence than Mr. Trujillo and Mr. Lopez would not create an
22 unwarranted disparity, for the circumstances I've just
23 explained.

24 I conclude that a severe sentence must be imposed
25 given the nature of Mr. Lora's crimes and the danger he

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1 presents to the community.

2 Having considered all the circumstances, I intend to
3 impose an aggregate sentence of 30 years. I conclude that a
4 life sentence is not necessary, given that Mr. Lora is now 49
5 years old.

6 As to supervised release, although I expect that
7 Mr. Lora will be deported after serving his sentence, in the
8 event he is not, he will be subject to an aggregate sentence of
9 five years.

10 I intend to impose the following mandatory conditions
11 of supervision: Mr. Lora will not commit another federal,
12 state, or local crime;

13 He will not unlawfully possess a controlled substance;

14 He will cooperate with the collection of DNA as
15 directed by the probation officer;

16 He will refrain from any unlawful use of a controlled
17 substance, and he will submit to a drug test within 15 days of
18 release from imprisonment and at least two periodic drug tests
19 thereafter.

20 I intend to impose the 12 standard conditions of
21 supervised release set forth in the presentence report along
22 with the following special conditions: Mr. Lora will submit
23 his person and any property, residence, vehicle, papers,
24 computer, or other electronic communication and storage devices
25 to a search on the grounds that there's a reasonable suspicion

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1 that a violation of the conditions of his supervised release
2 may be found. Failure to submit to a search may be grounds for
3 revocation. Mr. Lora will warn any other occupants that the
4 premises may be subject to search pursuant to this condition.
5 Any search must be conducted at a reasonable time and in a
6 reasonable manner.

7 Mr. Lora will obey the immigration laws and comply
8 with the directives of the immigration authorities.

9 I do not intend to impose a fine because I find
10 Mr. Lora lacks the ability to pay a fine.

11 I am required to impose a \$200 special assessment.

12 Mr. Pittell, is there anything further you wish to
13 say?

14 MR. PITTELL: Not at this time. Thank you.

15 THE COURT: Mr. Lora, anything you wish to say?

16 THE DEFENDANT: No.

17 THE COURT: Mr. Nicholas, anything else for the
18 government?

19 MR. NICHOLAS: No, your Honor. Thank you.

20 THE COURT: Mr. Lora, for the reasons I just stated,
21 it is the judgment of this Court that you be sentenced to 25
22 years' imprisonment on Count Three and to five years'
23 imprisonment on Count One, with those terms to run
24 consecutively.

25 You are sentenced to five years' supervised release on

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1 Count One and five years supervised release on Count Three,
2 with those terms to run concurrently.

3 Your term of supervised release will be subject to the
4 mandatory standard and special conditions of supervised release
5 I just mentioned.

6 You are ordered to pay a special assessment in the
7 amount of \$200.

8 Mr. Pittell, do you have any requests as to
9 designation?

10 MR. PITTELL: As close as possible to the metropolitan
11 New York City area in order to promote -- facilitate family
12 visits.

13 THE COURT: Mr. Nicholas, are there any open counts?

14 MR. NICHOLAS: I think Count Two has already been
15 dismissed pursuant to the Court's order. To the extent there
16 are open counts from the S2 or S1 indictments, we ask that
17 those be dismissed.

18 THE COURT: That motion is granted.

19 I do recommend to the Bureau of Prisons that Mr. Lora
20 be incarcerated as close as possible to the New York City
21 metropolitan area, so that he may maintain ties with his family
22 and friends during his period of incarceration.

23 Mr. Lora, I am required to advise you of your appeal
24 rights. You can appeal your conviction if you believe that
25 your conviction was unlawful or that it was not supported by

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1 the evidence.

2 You also have the right to appeal the sentence I
3 imposed. With few exceptions, any notice of appeal must be
4 filed within 14 days of judgment being entered in your case.
5 Judgment will likely be entered later this week. Mr. Pittell
6 will discuss with you whether or not you wish to file a notice
7 of appeal. If you're not able to pay the costs of an appeal,
8 you may apply for leave to appeal in forma pauperis. If you
9 request, the Clerk of Court will prepare and file a notice of
10 appeal on your behalf.

11 Is there anything else?

12 MR. NICHOLAS: No, your Honor.

13 * * *